SUPREME COURT, U. S.

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JOHN F. DAVIS, CLERK

In The

Supreme Court of the United States

October Term, 1969

No. 593

LOUIS BALTHAZAR and DORETTA BALTHAZAR, his wife,

Plaintiffs-Appellants,

vs.

MARI LTD., an Illinois corporation, and ALLAN L. BLAIR; JOHN BOYLE, Chief Judge of the Circuit Court of Cook County, Illinois, as representative of all chief judges of Circuit Courts in the State of Illinois,

Defendants-Appellees.

On Appeal from a Decision of a Three-Judge Court of the District Court of the Northern District of Illinois, Eastern Division

JURISDICTIONAL STATEMENT

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MARI LTD., an Illinois corporation, and ALLAN L. BLAIR; JOHN BOYLE, Chief Judge of the Circuit Court of Cook County, Illinois, as representative of all chief judges of Circuit Courts in the State of Illinois,
Defendants-Appellees.

On Appeal from a Decision of a Three-Judge Court of the District Court of the Northern District of Illinois, Eastern Division

JURISDICTIONAL STATEMENT

This is an appeal from a final judgment of a three-judge court, of the District Court of the Northern District of Illinois, Eastern Division, entered on June 27, 1969. The plaintiffs sought a declaration that the Illinois "tax deed" statute was unconstitutional. The court declared the statutory scheme "extremely harsh", and acknowledged that it resulted in a "windfall" to private speculators through use of state confiscatory power. However, the court upheld the statute in the face of an attack under the due process provision of the Fourteenth Amendment, holding that the matter of such "harsh" legislation was a legislative and not a judicial question. (Appendix A)

Thus this case presents a substantial federal constitutional question not previously decided by this Court:

> Whether under an Illinois statute that provides for payment of delinquent real estate taxes by a stranger a state may permit confiscation for the benefit of such private party of the entire parcel of property, (including any value in excess of the delinquency and a premium to the tax payers) merely because the owner fails to make a timely redemption.

The court below, relied solely on a misapprehension of this Court's opinion in *Nelson* v. *New York,* 352 U.S. 103 (1956). In that case this Court upheld a statutory tax deed system because it met the requirements of due process as it provided a means for excess value over the delinquency to go to the benefit of the property owner.

This Court has jurisdiction to review the decision of the three-judge court on direct appeal under Title 28 United States Code Section 1253 and Section 2101(a), as applied in *United States* v. *Georgia Public Service Comm'n.,* 371 U.S. 285, 287 (1963), *Idlewild* v. *Bon Voyage Liquor Corp.* v. *Epstein,* 370 U.S. 713, 715 (1961).

QUESTIONS PRESENTED

1. Whether the Illinois "tax deed" statute is invalid as allowing confiscation of property without an opportunity for just compensation.
2. Whether such a statute violates equal protection of the laws where no other tax delinquency gives rise to confiscatory power for the benefit of a private person, and where the amount of the confiscation is unrelated to the tax delinquency.

STATUTES INVOLVED

Smith-Hurd Illinois Annotated Statutes, Ch. 120, Sections 726, 734, and 747 (Appendix B).

STATEMENT OF THE CASE

Plaintiffs in 1964 failed to pay some five hundred dollars in real estate taxes on their $16,000 home. A "tax buyer" paid the delinquent taxes in 1966, and under an Illinois statutory scheme, received a deed to the entire property in 1969, after the plaintiffs failed to redeem the delinquent taxes. Sections 726, 734, and 747, read together as a statutory scheme, make no provision by public sale or otherwise for satisfaction of the tax delinquency alone, but instead allow the state's confiscatory powers to be used to award the entire property to the tax buyer if there is no redemption.

Yet the record shows that the incentive for the tax buyer to put the property back on the tax rolls is interest on his payment (under Illinois law up to 48% on his investment), and not the promise of the property itself.

The statutory scheme works this way: property that is delinquent for two years is "sold" subject to redemption within two years. The "buyer" does not make his purchase at a public sale, with the proceeds above the delinquency to the owner. Instead he bids only what premium (called a penalty to the owners) he will accept upon redemption. Although he can "bid" to accept less,

the statute entitles him to 12% for 6 months or delinquency after the "purchase", 24%, 36% and 48%, for each of the succeeding six months. However if there is no redemption, the buyer or his assign gets a deed —whatever the value of the property, and whatever the value of the surplus over the amount of the tax delinquency. There is no way under the Illinois statute for an owner who is unable to redeem to obtain his equity above his tax debt.[1]

The tax buyer, here, pursuant to a wide spread practice in the field, before expiration of the redemption period sold its interest in plaintiffs' home to a real estate speculator. When plaintiffs failed to redeem, the speculator paid subsequent taxes and obtained a deed by court order. He then sought to evict plaintiff from the home. Plaintiff filed suit under 28 U.S.C.A. § 1331, first for injunctive relief, and then for declaratory judgment that the Illinois statute was unconstitutional. The suit was filed as a class action on behalf of all persons similarly situated. The District Court determined that there was a substantial federal question at issue, granted temporary injunctive relief to plaintiff, and ordered the convening of a three-judge court.

The three-judge court took the case on the pleadings —there was no dispute as to the facts. The court agreed that the Illinois statutory scheme was "extremely harsh", and created a private "wind fall". However the court de-

[1] In those cases where a tax buyer pays delinquent taxes on property that its mortgaged, the security holder generally causes a redemption. However, the scheme involved here where the entire property is confiscated occurs almost solely where the property is owned free and clear, often by widows or persons who are "land poor" and unable to redeem.

cided that a home owner who could not afford to redeem his delinquent taxes within the two year statutory period could instead sell his home within that time. The court did not consider the practical difficulties of selling under such circumstances, or the fact that the Illinois statute applies even to incompetent owners.

The Court below thereby ignored this point: Upon the homeowner's failure or inability to sell he forfeits his entire equity above his tax delinquency, which is conveyed by state power to a private person. Despite this fact, the three-judge court left the matter to the legislature for improvement and dismissed the complaint for failure to state a claim. Plaintiff filed timely notice of appeal and the parties agreed between themselves to maintain possession of the property in status quo pending determination of this appeal on behalf of all of the class members of homeowners involved.

ARGUMENT

This Court has consistently upheld the power to confiscate property to pay delinquent taxes but only where there is an opportunity for the delinquent debtor to recover the value of his property that exceeds his debt, even if it becomes too late for him to redeem the property itself. *Nelson* v. *New York,* 352 U.S. 103 (1956), *Slater* v. *Maxwell,* 75 U.S. 268 (1867) and thereby the requirements of due process of law are met. If the owner does not choose to avail himself of the opportunity to receive the surplus, the government may be entitled to the full value of the property, *Nelson* v. *New York,* (*supra*).

Under Illinois law there is no means whatsoever for a delinquent owner who cannot redeem to obtain the surplus value of his property. The court below termed this a "harsh" law, termed it a "wind fall" to the tax buyer, but misapprehended *Nelson* v. *New York* to reach its result. It is clear that this Court would not have reached the result it did in that case on the Illinois scheme, "But we do not have here a statute which absolutely precludes an owner from obtaining surplus proceeds." *Nelson, supra,* at p. 110. Thus, this is a case of first impression, squarely presenting the Court with the question:

> Is a statute which absolutely precludes an owner from obtaining surplus proceeds constitutional?

Alternatively, is such a statute valid where

> (a) there is no rational relationship between the tax delinquency and the confiscation, or between the tax buyer's incentive to put the property back in the tax rolls, which is interest, and the state's scheme, which is to grant him the entire property, and

(b) there is no other tax delinquency in state or federal law that permits confiscation beyond a tax debt without an opportunity for just compensation.

The Fifth Amendment mandate has been imposed on the states as an element of due process under the Fourteenth Amendment. *Chicago, Burlington & Quincy R. Co.* v. *Chicago*, 166 U.S. 226, 236 (1897). As this court stated in the *Chicago, Burlington and Quincy* decision, the requirement of just compensation is based on concepts of "natural equity"—a sense of what is fair. 166 U.S. at 236. So also, the whole concept of due process, both substantive and procedural, is based on our "American ideal of fairness". *Bolling* v. *Sharpe*, 347 U.S. 497, 499 (1954); *Joint Anti-Fascist Refugee Comm.* v. *McGrath*, 341 U.S. 123, 162, 163 (1951).

What could be more offensive to this basic sense of fairness than to allow a state to deprive a family of a sixteen thousand dollar investment and to give that investment to a real estate speculator in return for five hundred dollars. The sense of injustice is heightened by the fact that giving such windfalls to real estate speculators are not necessary to the accomplishment of Illinois' goal of speedy, efficient revenue collection. As stated above, the principal inducement for paying another person's tax debt to the state is the high penalty provided by statute. Illinois could well afford a system by which tax purchasers engaged in open bidding which had some relation to the then existing market value of the property and still provided for substantial penalties. Under such a system the tax purchaser need not actually pay the amount bid in excess of the tax liability until the time for redemption had passed. The debtor

who was able to redeem would thus not have to pay an exorbitant redemption price. If the property was not redeemed, the tax purchaser would then pay the debtor the surplus over the tax liability and penalties.

The gross injustice inflicted by the Illinois statute in this case is not an uncommon occurrence. Under this system hundreds of property owners lose their entire interest in their property every year, and a few real estate speculators obtain substantial windfalls.

It is submitted that the court below failed to recognize the historic premises of fairness embodied in the constitutional requirements of just compensation and due process. There is no other explanation for countenancing such a grossly unfair practice in the face of such specific constitutional protection.

For the foregoing reasons, we believe that the question presented by this appeal is substantial and of broad public importance. The court should take jurisdiction and declare the Illinois statutory scheme unconstitutional.

Respectfully submitted,

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APPENDIX A

Judgment of the District Court

IN THE UNITED STATES DISTRICT COURT
Northern District Of Illinois
Eastern Division

LOUIS BALTHAZAR and DORETTA BALTHAZAR, his wife,
Plaintiffs,

vs. No. 69 C 898

MARI LTD., an Illinois corporation, and ALLAN L. BLAIR; JOHN BOYLE, Chief Judge of the Circuit Court of Cook County, Illinois, as representative of all chief judges of Circuit Courts in the State of Illinois,
Defendants.

Before KILEY, Circuit Judge, and PERRY and DECKER, District Judges.

Per Curiam:

Plaintiffs Louis and Doretta Balthazar challenge the constitutionality of the Illinois statutes which authorize real property tax deeds.[1] Although the General Assembly has recently made minor changes in the legislation, the general statutory scheme has remained unaltered since 1872. Defendants include alleged systematic purchasers of delinquent property and the state judicial officers who are responsible for administering the statutes.

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[1] Although a majority of states enforce the payment of real estate taxes by public sale, five states apparently have legislation similar to that in Illinois. See page 3 *infra*. Generally, there is a ceiling on the bidding, so that potential purchasers can only compete by bidding the least penalty (or interest). See Ariz. Rev. Stat. § 42-393 *et seq.* (1956); Fla. Stat. §§ 194.01-194.63 (1958); Mich. Stat. §§ 7.104-7.123 (1960); N.J. Stat. §§ 54:5-19—54:5-31 (1960); S.D. Code §§ 65-2761—65-2779 (1962).

A three-judge district court was convened pursuant to 28 U.S.C. § 2284.[2] Asking that the complaint be dismissed, defendants maintain that plaintiffs fail to state a cause of action.[3]

The annual Illinois sale of tax delinquent real estate is commenced by the County Collector's publication of the tax delinquent list which specifies when application for a judgment of sale will be made to the Circuit Court. On that date, the Circuit Court sets a time for filing objections. If no objections are submitted, the Court then enters a judgment of sale. At least five days prior to the actual sale, the County Collector notifies each delinquent tax debtor by mail of the date on which the sale will begin. The real estate is then offered to the public by parcels. Bidding is restricted to the amount of overdue taxes and interest. The successful competitor is the bidder who permits the owner to redeem for the least penalty (interest) which cannot exceed 12% for each six months or fraction thereof during the two year redemption period.

Rather than receiving title to the land, the tax buyer obtains a certificate of purchase.[4] Within not more than five nor less than three months before the redemption

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[2] Under 28 U.S.C. § 1331, jurisdiction exists because a federal question is involved. See, *e.g.*, *Georgia R. Co.* v. *Redwine*, 342 U.S. 299, 304 (1952); *Schneider* v. *District of Columbia*, 117 F. Supp. 705, 718 (D. D.C. 1953).

[3] Mr. Robert S. Cushman submitted a brief as amicus curiae, urging dismissal of the complaint. The amicus brief has been considered only as representative of the views of Interstate Bonding Corporation, a company which apparently purchases land at tax sales and often resells certificates of purchase to certain of the defendants. When requesting leave to participate in this action, Mr. Cushman acknowledged his association with Interstate Bonding Corporation and openly stated that he would support the constitutionality of the legislation.

[4] See, *e.g.*, 1967 Ill. Rev. Stat. Ch. 120 ¶ 729:

> "The county clerk shall make out and deliver to the purchaser of any lands or lots sold as aforesaid a certificate of purchase, . . . describing the land or lots sold as the same was described in the delinquent list . . ."

period expires, the tax purchaser may file a petition in the Circuit Court requesting a tax deed. The tax purchaser must also serve notice of the filing and of the expiration date for redemption on the owner by mail. If the owner fails to redeem within the two years, the tax buyer may obtain a tax deed from the County Clerk. 1967 Ill. Rev. Stat. Ch. 120 §§ 706, 711, 726, 729, 744, 747 & 749.

Rather than attempting to purchase real estate, bidders normally seek the penalty-interest. During the redemption period, the interest may total as much as 48% of the bid price. Since the owner can redeem by merely paying the delinquent taxes and interest, valuable land is routinely redeemed. In the rare case when an owner fails to redeem, however, the purchaser may obtain the property for a fraction of its market value, thus gaining as a windfall all "surplus value" which exceeds the land's tax and interest liabilities.

The Balthazars claim that when their property was sold at a tax sale, they were deprived of the due process of law,[5] as guaranteed by the Fourteenth Amendment.[6] Plaintiffs assert that tax delinquent real property can-

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[5] The Supreme Court's recent garnishment decision, *Sniadack* v. *Family Finance Corp.*, 37 L.W. 4520, is inapplicable. "We deal here with wages—a specialized type of property presenting distinct problems in our economic system." 37 L.W. 4520.

[6] Relying upon Supreme Court condemnation cases, plaintiffs also maintain that they were deprived of "just compensation" for their property. See, *e.g.*, *United States* v. *Miller*, 317 U.S. 369 (1943); *Cincinnati* v. *Vester*, 281 U.S. 439 (1930); *Dohany* v. *Rogers*, 281 U.S. 362 (1930); *Brown* v. *United States*, 263 U.S. 78 (1923), *Chicago, Burlington and Quincy R. Co.* v. *Chicago*, 166 U.S. 226 (1897). These cases are inapplicable. Rather than taking private property for a public purpose, Illinois is here collecting taxes which are admittedly overdue. *Bell's Gap Railroad* v. *Pennsylvania*, 134 U.S. 232, 239 (1890), declared that:

> "The process of taxation does not require the same kind of notice as is required in a suit at law, or even in proceedings for taking private property under the power of eminent domain. It involves no violation of due process of law, when it is executed according to customary forms and established usages . . ."

not be sold by the state to a private purchaser at a tax sale unless there is a provision for unrestricted public bidding based on the real estate's value.[7] The Illinois statutes, in contrast, limit the bidding to the total of the overdue taxes, interest, and penalties.

The purpose of a public sale, however, is to provide land owners with an opportunity to protect their real estate investment, even though their taxes may be in arrears. So long as owners have this opportunity, state legislation meets the due process requirements of the Fourteenth Amendment.[8] Thus, the Supreme Court recently held that states only need to give property owners adequate notice of their delinquency and of the foreclosure proceedings, explaining that:

> "What the City of New York has done is to foreclose real property for charges four years delinquent and, in the absence of timely action to redeem or to recover any surplus, retain the property or the entire proceeds of its sale. We hold that nothing in the Federal Constitution prevents this where the record shows adequate steps were taken to notify the owners of the charges due and the foreclosure proceedings."[9]

Nelson v. *New York City*, 352 U.S. 103, 110 (1956).[10]

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[7] For example, the existing Illinois system could be modified so that a public sale at the end of the redemption period recovered the property's surplus value for the original owner. Such a law would protect delinquent taxpayers who failed to act during the redemption period.

[8] The Supreme Court has frequently upheld the constitutionality of tax delinquency statutes which do not automatically provide for a public sale of the property. See, *e.g.*, *Kentucky Union* v. *Kentucky*, 219 U.S. 140 (1911); *King* v. *Mullins*, 171 U.S. 404 (1898). Under specified circumstances, the statutes considered in the preceding cases permitted landowners to obtain a public sale. But the states required property owners to assume the initiative, as does the Illinois legislation's provision for a redemption period in which landowners may protect their investment from forfeiture.

[9] Since New York may retain the full value of seized property, any state such as Illinois may elect to sell the land to anyone who is willing to pay the overdue taxes.

The Illinois redemption period permits delinquent landowners to protect their investments because at any time during the two years they may convey the property to a purchaser, subject to the outstanding certificate of purchase. Since potential buyers may then redeem, the sellers can negotiate a purchase price which includes the surplus value. In fact, the challenged statutes favor those landowners who are likely to be in arrears, either because they are poor or because they lack ready cash. Two years afford property owners ample opportunity to raise enough money to redeem or to canvass prospective buyers for the highest possible purchase price. In contrast, at a forced judicial sale, real estate is often sold for substantially less than its apparent market value.

Furthermore, the Illinois statutes are supported by the General Assembly's unassailable purpose to collect in an efficient manner all overdue real estate taxes. The bidding restrictions which are peculiar to Illinois and five other states[11] similarly promote a legitimate legislative goal—to facilitate redemption by delinquent taxpayers. If the competitors at the tax sale bid on the property's market value, a landowner would have to raise as much money as the highest bid in order to redeem. Moreover, the existing bidding system tends to depress the penalty-interest rate, thus protecting delinquent taxpayers from excessive charges.

In their complaint, the plaintiffs also ask this Court to invalidate a private agreement executed by the Balthazars in favor of one of the defendants. While there may be ancillary federal jurisdiction to determine the issue, we decline to exercise that jurisdiction since the

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[10] The challenged New York statutes authorized strict foreclosure unless a property owner submitted timely proof that his land's value substantially exceeded the tax due. The plaintiffs before the Supreme Court failed to respond to foreclosure notices and thus lost their property even though the unpaid charges totaled less than 2% of the real estate's market value ($65 due on a $6,000 parcel, and $814.50 due on a second lot assessed at $46,000). See 352 U.S. 105-106 and 109-110.

[11] See note 1 *supra*.

plaintiffs' primary grievance fails to state a cause of action. Similarly, we do not decide any questions that plaintiffs may wish to raise concerning the procedural aspects of the Illinois tax deed statutes. If they so desire, the plaintiffs may present the procedural issues and the private agreement to the state courts for possible relief.

In conclusion, the Illinois tax delinquency statutes allow all real estate owners to recover the surplus value of their land. During the two year period of redemption, the owners can simply sell the property to a private purchaser subject to the tax certificate. The Illinois legislation is constitutional since delinquent landowners, including the plaintiffs, are adequately notified of their tax deficiencies and of any tax sale or foreclosure.

Unfortunately, the Illinois system severely penalizes all real estate owners who fail to redeem. The total forfeiture seems extremely harsh when overdue taxes amount to only two or three percent of the property's value.[12] But oppressive statutes must be tempered by the legislature, not the courts. In *Nelson* v. *New York City*, 352 U.S. 103, 110-111 (1956), the Supreme Court concluded that:

> "It is contended that this is a harsh statute. The New York Court of Appeals took cognizance of this claim and spoke of the 'extreme hardships' resulting from the application of the statute in this case. But it held, as we must, that relief from the hardship imposed by a state statute is the responsibility of the state legislature and not of the courts, unless some constitutional guarantee is infringed."

Accordingly, an order has been entered today dismissing the complaint for failure to state a cause of action.

/s/ Roger N. Kiley
United States Circuit Judge
/s/ J. S. Perry
/s/ Bernard M. Decker
United States District Judges

Dated: June 27, 1969.

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[12] See note 10 *supra*.

APPENDIX B

Statutes Involved

§ 726. *What bid accepted*

The person at such sale offering to pay the amount due on each tract or lot for the least percentage thereon as penalty, shall be the purchaser of such tract or lot: Provided, that no bid shall be accepted for a penalty exceeding twelve per cent (12%) of the amount of such tax or special assessment. Smith-Hurd Anno. Stat., (1967) Ch. 120.

§ 734. *Time and condition of redemption*

Real property sold under the provisions of this Act may be redeemed at any time before the expiration of 2 years from the date of sale, by payment in legal money of the United States to the county clerk of the proper county, the amount for which the same was sold, together with the amount of the penalty bid at such sale, unless the property has been purchased pursuant to Section 272 of this Act, in which event the penalty bid shall be 12%, if redeemed at any time before the expiration of 6 months from the day of sale; if between 6 and 12 months, the amount for which the same was sold, together with twice the amount of the penalty bid; if between 12 and 18 months, the amount for which the same was sold, together with 3 times the amount of the penalty bid; if between 18 months and 2 years, the amount for which the same was sold, together with 4 times the amount of the penalty bid at said sale. The person redeeming shall also pay the amount of all taxes and special assessments accruing after such sale with 7% penalty thereon, for each year or portion thereof intervening between the time of the payment of the subsequent tax or special assessment and the time of redemption, in all cases where the purchaser at the tax sale, or his assignee, pays such subsequent tax or special assessment after it has become delin-

quent or, after the holder of the certificate of purchase has filed a petition for a tax deed pursuant to Section 266 of this Act; also, all fees paid to the registrar of titles of the proper county incident to registering tax certificates in compliance with "An Act concerning land titles," approved May 1, 1897, as heretofore and hereafter amended, and it is the duty of the county clerk to include in the certificate of redemption the amount of the subsequent taxes, special assessments and fees of the registrar of titles paid by the purchaser or holder of the tax certificate: Provided, however, that the county clerk shall not be required to include any subsequent taxes, special assessments or fees of the registrar of titles in his certificate of redemption, nor shall the payment thereof be a charge upon the land sold for taxes, unless the purchaser, assignee, or holder of the tax certificate of sale shall have filed and have posted by the county clerk on the tax judgment, sale, redemption and forfeiture record, before redemption, an official, original or duplicate receipt for the payment of such subsequent taxes, special assessments or fees of the registrar of titles, and it shall be the duty of the tax collector and registrar of titles to furnish such duplicate receipts. The person redeeming shall also pay all costs and expenses of receivership pursuant to Section 253a of this Act to the extent that such costs and expenses exceed any income from the property in question, provided such costs and expenditures have been approved by the court appointing such receiver and provided that a certified copy of such order of approval is filed and posted by the county clerk on the tax judgment, sale, redemption and forfeiture record before redemption. In the event that income should exceed expenditures, such net income is to be deposited with the clerk of the court ordering the tax sale and shall be distributed upon court order to the owner or owners of the property in question in the proportions as determined by said court.

In the event that the property in question shall not be redeemed, no deficiency judgment shall be taken on ac-

count of said receivership proceedings, against the owner or owners of the property.

Such real property may also be redeemed after the expiration of 2 years from the date of sale, until expiration of the extended period of redemption, by payment in legal money of the United States to the county clerk, of the amount for which the said property was sold, the penalties provided herein for the 2 years after sale together with interest thereafter at 6% per annum on the face amount of such tax sales, and subsequent taxes, special assessments, fees of the registrar of titles and costs and expenses of receivership paid by the purchaser as herein provided, and advertising fees and $5 costs. Tenants in common or joint tenants shall be allowed to redeem their individual interests in real property sold under the provisions of this Act in the same manner and under the terms specified in this Section for the redemption of other real property; and redemption made shall inure to the benefit of the person having the legal or equitable title to the property redeemed, subject to the right of the person making the same to be reimbursed by the person benefited.

As amended 1957, July 9, Laws 1957, p. 2281, § 1; 1963, Aug. 9, Laws 1963, p. 2699, § 1; 1967, July 26, Laws 1967, p. 2128, § 1. Smith-Hurd Anno. Stat., (1967) Ch. 120.

TAX DEEDS, REDEMPTIONS, SALES IN ERROR

§ 747. *Petition for issuance of tax deed—Filing fee—Notice—Order—Fee of clerk—Effect of deed—Writ of assistance—Appeal—Liberal construction*

At any time within 5 months prior to the expiration of the time of redemption from the sale of any real estate for non-payment of taxes or special assessments, pursuant to judgment and order of sale on the County Collector's application for judgment and order of sale under Section

225 of this Act, the purchaser or his assignee may file a petition in the circuit court in the same proceeding wherein the judgment of sale was entered upon which the sale was had, praying that the court direct the county clerk to issue a tax deed if the real estate is not redeemed from the sale. Such petition shall be accompanied by a filing fee of $15. Notice of the fact of filing the petition and the date on which the petitioner intends to make application for an order on the petition that a deed issue if the real estate is not redeemed from the sale shall be given to occupants, owners and persons interested in the real estate in the same manner as provided in Section 263, except that only one publication is required. The notice to occupants and the notice by publication shall be given not less than 3 months prior to the date fixed for making application that a deed issue. The purchaser or his assignee may, if he desires, insert in the notice or notices required by Section 263 the fact of filing the petition for a tax deed and the date on which he intends to apply in the circuit court for an order for a deed if the real estate is not redeemed from the sale, in which case the notice provided by this Section is not required. The county clerk shall be notified of the filing of the petition and any person owning or interested in the real estate may, if he desires, appear in the proceeding. If the time of redemption expires and the real estate has not been redeemed from the sale and all taxes and special assessments which became due and payable subsequent to the sale have been paid and all forfeitures and sales which occur subsequent to the sale have been redeemed and the notices required by law have been given and the petitioner has complied with all the provisions of law entitling him to a deed, the court shall so find and shall enter an order directing the county clerk on the production of the certificate of purchase and a certified copy of the order, to issue to the purchaser or his assignee a tax deed. However, the court shall insist on strict proof of notice and, in the event due diligence is claimed, shall inquire into the facts of diligence, and shall require

further that the evidence relative thereto be transcribed in all cases including default matters, and such transcript shall be made a part of the court order. The county clerk is entitled to a fee of $5 for the issuance of the deed. The clerk may not include in such a deed more than one lot, block, tract or piece of land as listed, assessed and sold in one description, except in cases where several such lots, blocks, tracts or pieces of land are owned by one party or person. If the court refuses to enter an order directing the county clerk to execute and deliver the tax deed, because of the failure of the purchaser to fulfill any of the above provisions, it shall order the return of the purchase price forthwith as in case of sales in error in all cases where the purchaser, or his assignee has made a bona fide attempt to comply with the statutory requirements for the issuance of the tax deed. The court may, and upon application therefor shall, issue a writ of assistance to put the grantee in possession of the real estate and may enter such orders and issue such writs as may be necessary or desirable to maintain the grantee in possession of the real estate. Tax deeds issued pursuant to this Section are incontestable except by appeal from the order of the court directing the county clerk to issue the tax deed. However, relief from such order may be had under Section 72 of the "Civil Practice Act", approved June 23, 1933, as heretofore or hereafter amended, in the same manner, upon the same grounds and to the same extent as may be had under that Section with respect to final orders, judgments and decrees in other proceedings and the court shall consider defenses relating to questions of the notices required by Section 263 and the proof presented in the hearing required by this Section. This Section shall be liberally construed so that tax deeds herein provided for shall convey merchantable title. Tax deeds issued pursuant to this Section are subject to Section 266b of this Act. Smith-Hurd Anno. Stat., (1967) Ch. 120.

SUPREME COURT, U. S.

OCT 3 1969

JOHN F. DAVIS, CLERK

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No. 593

LOUIS BALTHAZAR AND DORETTA BALTHAZAR, HIS WIFE,

Plaintiffs-Appellants,

vs.

MARI LTD., AN ILLINOIS CORPORATION, AND ALLAN L. BLAIR; JOHN BOYLE, CHIEF JUDGE OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, AS REPRESENTATIVE OF ALL CHIEF JUDGES OF CIRCUIT COURTS IN THE STATE OF ILLINOIS,

Defendants-Appellees.

ON APPEAL FROM A DECISION OF A THREE-JUDGE COURT OF THE DISTRICT COURT OF THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

MOTION TO AFFIRM.

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Assistant State's Attorney,
Of Counsel.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969.

No. 593.

LOUIS BALTHAZAR AND DORETTA BALTHAZAR, HIS WIFE,

Plaintiffs-Appellants,

vs.

MARI LTD., AN ILLINOIS CORPORATION, AND ALLAN L. BLAIR; JOHN BOYLE, CHIEF JUDGE OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, AS REPRESENTATIVE OF ALL CHIEF JUDGES OF CIRCUIT COURTS IN THE STATE OF ILLINOIS,

Defendants-Appellees.

ON APPEAL FROM A DECISION OF A THREE-JUDGE COURT OF THE DISTRICT COURT OF THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

MOTION TO AFFIRM.

Appellee John Boyle, Chief Judge of the Circuit Court of Cook County, Illinois, by his attorney, Edward V. Hanrahan, State's Attorney of Cook County, Illinois, pursuant to Rule 16 of the United State's Supreme Court moves that the final judgment of the three-judge Court be affirmed on the ground that the judgment conforms with

prior decisions of this Court, and it is manifest that the questions on which the decision of this cause depends are so unsubstantial as not to need further argument.

THE ISSUE PRESENTED.

Does the Illinois statute pertaining to the sale of real estate to satisfy delinquent tax judgments violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution?

THE STATUTES INVOLVED.

These are adequately set out in the Jurisdictional Statement.

STATEMENT OF THE CASE.

On April 24, 1963, the Plaintiffs filed a Complaint in the District Court alleging the following facts: In 1964 the Plaintiffs failed to pay $500.00 in taxes upon real estate in which Plaintiffs had a total investment of $16,000.00. In 1966 the Plaintiffs' real estate was sold at public sale to the Defendant, Mari Ltd., to satisfy this delinquency. Pursuant to the Illinois Statute in question, the amount of the sale price was limited to the amount of the tax judgment, $500.00, plus interest not to exceed 12% every six months. During the two year period of redemption, the Plaintiffs failed to redeem, and in 1968, upon application of Mari Ltd., a tax deed issued to that defendant. The Plaintiffs allege that the statutory process whereby the Defendant obtained a tax deed was unconstitutional in that the sale price of the property was limited to the amount of the tax judgment and was not a public sale designed to obtain the market value of the property, and therefore the difference between the amount of the judgment and market value, called by the Plaintiffs "surplus

value", was taken without just compensation and due process of law.

The Defendants moved to dismiss the complaint on the grounds that the complaint failed to state a claim upon which relief could be granted.

On June 27, 1969, a three-judge Court, examining the question of the constitutionality of the statutes involved upon the facts alleged in the Complaint, held that the statutes were constitutional and dismissed the complaint for failure to state a claim.

ARGUMENT.

The Decision of the Three-Judge Court Dismissing the Plaintiffs' Complaint Was Consistent With Decisions of This Court.

In selecting the methods of taxation and the means to enforce the collection of taxes, states are vested with a great deal of discretion. This Court has held that the requirements of the Due Process Clause are satisfied when such statutes provide notice and an opportunity for the owner of the property to protect against forfeiture. (*King* v. *Mullins*, 171 U. S. 404) Contrary to the argument of the Plaintiffs, there is no constitutional requirement that any public sale be conducted prior to a taking of property for the failure to pay taxes. A state may simply forfeit land to satisfy delinquent taxes. (*Kentucky Union* v. *Kentucky*, 219 U. S. 140; *King* v. *Mullens*, 171 U. S. 404) Administrative methods rather than judicial proceedings can be used in the collection of taxes. (*Palmer* v. *McManon*, 133 U. S. 660; *Scottish Union Nat. Ins. Co.* v. *Bowland*, 196 U. S. 611)

In addition to the foregoing general principles of law in this area, this Court has specifically ruled adversely

to the argument of the plaintiffs now raised. In *Nelson* v. *New York City*, 352 U. S. 103, this Court had before it a city ordinance that provided for a forfeiture of property to the city to satisfy delinquent water charges. After the city forfeited the property of the delinquent taxpayer, the property was sold to a private person and the city retained all the proceeds. The amount of the delinquent water charges was far less than the fair market value of the property. When the plaintiff in *Nelson* claimed that this "surplus value" was taken without due process of law, this Court dismissed that claim and said:

> "What the City of New York has done is to foreclose real property for charges four years delinquent and, in the absence of timely action to redeem or to recover any surplus, retain the property or the entire proceeds of its sale. We hold that nothing in the Federal Constitution prevents this where the record shows adequate steps were taken to notify the owners of the charges due and the foreclosure proceedings."

Nelson v. *New York City*, 352 U. S. 103, 110.

The defendants submit that the *Nelson* case is controlling authority in the instant case.

The Plaintiffs attempt to avoid the holding of *Nelson* by repeatedly charging that the Illinois statute in question "absolutely precludes an owner from obtaining surplus proceeds" (J. S. 6); and the delinquent taxpayer has "no means whatsoever" to obtain the surplus value of his property. (J. S. 6) Just how the statute in question "precludes" the taxpayer from recovering surplus value is a mystery left unsolved by Plaintiffs. Obviously nothing in the wording of the statute stops the taxpayer from using any method he wishes to satisfy the delinquency during the redemption period. The statute places no bars or restrictions upon the taxpayer's dealing with his property as he sees fit to do. The Plaintiffs' latter charge, that by

operation of the statute there are no means available to the taxpayer to recover surplus value, is completely baseless. The taxpayer has a full two-year period to mortgage his property and use the proceeds to satisfy the tax lien, or the taxpayer can choose to sell his home on the open market subject to the tax lien. The delinquent taxpayer is free to use any other means he wishes to retire this debt. Certainly, giving a taxpayer a two-year period freely to manage his affairs and obtain a loan to keep his property or alternatively to sell his property to recover full market value is far superior to the forced public sale suggested by Plaintiff. The difficulty with the Plaintiffs' present position is that they let the two-year period slip away without taking any action to save their property or investment. This places these Plaintiffs in the same position as the Plaintiff in *Nelson*, and the holding in *Nelson* is consistent with the order of the three-judge Court below.

CONCLUSION.

For the foregoing reasons, the Defendant, John Boyle, Chief Judge of the Circuit Court of Cook County, respectfully moves this Court to affirm the judgment of the district Court.

Respectfully submitted,

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DANIEL P. COMAN,
Chief of the Civil Division.

THOMAS E. BRANNIGAN,
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OCT 13 1969
JOHN F. [illegible], CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 593

LOUIS BALTHAZAR and DORETTA BALTHAZAR, his wife,

Plaintiffs-Appellants,

vs.

MARI, LTD., an Illinois corporation, and ALLAN I. BLAIR, JOHN BOYLE, Chief Judge of the Circuit Court of Cook County, Illinois, as representative of all chief judges of Circuit Courts in the State of Illinois,

Defendants-Appellees.

On Appeal from a Decision of a Three Judge Court of the District Court of the Northern District of Illinois, Eastern Division

MOTION TO AFFIRM

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 593

LOUIS BALTHAZAR and DORETTA BALTHAZAR, his wife,

Plaintiffs-Appellants,

vs.

MARI, LTD., an Illinois corporation, and ALLAN L. BLAIR; JOHN BOYLE, Chief Judge of the Circuit Court of Cook County, Illinois, as representative of all chief judges of Circuit Courts in the State of Illinois,

Defendants-Appellees.

On Appeal from a Decision of a Three-Judge Court of the District Court of the Northern District of Illinois, Eastern Division

MOTION TO AFFIRM

Appellees, Mari, Ltd. and Allan L. Blair, by their attorney, Maurice P. Raizes, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move that the final judgment and decree of the District Court be affirmed on the ground that the questions raised by Appellants have been resolved by several decisions of the Supreme Court of the United States which effectively set a precedent to the extent that the questions are so unsubstantial as not to warrant further argument.

QUESTIONS PRESENTED

Is the Illinois statute which provides for the sale of real estate for nonpayment of delinquent real estate taxes and subsequent issuance of a tax deed if no redemption is made within the statutory period and a judicial determination that due notice was served, constitutional within the meaning of the due process clause and the equal protection clause of the Fifth Amendment of the United States Constitution?

STATUTES INVOLVED

Although appellants in their appendix B to the Jurisdictional Statement list statutes that are pertinent to the instant cause, they fail to list *all* of the relevant statutes so that this Court will be fully aware of the statutory scheme involved with regard to the sale of real estate for delinquent taxes, including the requisite notices served, the redemption rights, and the procedure for final issuance of a tax deed where applicable.

Rather than attempting to supplement appellants' incomplete list piecemeal, attached in Appendix A to this Motion are the following relevant sections of the Illinois Revenue Act of 1939 as amended which provide a more complete picture of the statutory scheme: 225, 230, 235, 237, 240, 245, 247, 248, 263, 266, 268, 270 and 271 Ill. Rev. Stat. 1961, Chapter 120, Secs. 706, 711, 716, 718, 724, 726, 728, 729, 741, 744, 747, 748, 751, and 752, respectively.

STATEMENT OF THE CASE

This matter involves a direct appeal from a final judgment and decree entered on June 21, 1967, by a District Court composed of three judges specially constituted pursuant to 28 USC § 2284, whereby appellants' complaint was dismissed for failure to state a cause of action.

The pertinent facts are reflected from the allegations of the complaint (which for this purpose must be admitted as true since the dismissal is based on a motion to dismiss) and other evidence introduced during the pendency of the case.

Appellants owned a building in Chicago, Illinois containing three apartments, plus a barber shop located in the basement. They had an investment in this property of approximately $16,000.00 comprising $12,000.00 actually paid for the original purchase, plus interest paid. Appellants failed to pay the 1961 general real estate taxes for the property which amounted to approximately $[illegible].

Thereafter, pursuant to a judgment and order of sale, the property was sold at a public sale for nonpayment of these taxes to a predecessor in interest of appellee, Mary Lee Peterson. Pursuant to the provisions of the Illinois statutes, the purchaser paid out at the sale was the full amount of the tax delinquency for the years and the successful bidder was the party who agreed to accept the least amount of penalty in case of redemption. Statutory notices which informed appellants of the time of their right to redeem or their right to contest the regularity of a tax deed were served, received and read by appellants. Appellants knowingly

ignored these notices and refused to redeem from the tax sale within the statutory period of redemption (which consisted of two years plus an additional extension of nine months, totaling two years and nine months).

Consequently, the predecessor in interest to Marx Ltd. paid the subsequent delinquent taxes due on the property and after a judicial determination of compliance with all statutory prerequisites was issued a tax deed for the premises.

Title was subsequently transferred to appellee, Marx Ltd. When Marx, Ltd. sought to evict appellants from the premises, they filed the instant suit to restrain such eviction and to further declare the statutory provisions for real estate tax sales to be unconstitutional on the basis that there is no public sale whereby the surplus value (the market value of the property minus the existing liability of the taxing authorities) could be returned to an owner. The complaint alleged a class action.

The Illinois statutory scheme pertaining to tax sales of delinquent real estate taxes was ably set forth in the brief of the amicus curiae filed in the District Court and may be summarized as follows:

The annual sale of tax delinquent real estate in Illinois is commenced by publication by the county collector of the county involved of a list of the delinquent properties and on the date stated in the publication application is made for judgment and order of sale in the Circuit Court of the county involved (35 and 236 of the Revenue Act of 1939, as amended; Ill. Rev. Stat. 1969, Chap. 120, 716 and 716, respectively; App. A, pp. 1a and 16a). The court rules for filing objections to the sale and upon expiration of the time, the court enters a judgment against all real estate to which objection has not been filed and the sale con-

mences (§235 of the Revenue Act; Ill. Rev. Stat., 1967, Chap. 120, §716, App. A, p. 18).

At least five days prior to the date the sale begins, the county collector is required to give notice of such fact and the date of the sale by mail to each delinquent tax debtor (§230 of the Revenue Act; Ill. Rev. Stat., 1967, Chap. 120, §711, App. A, p. 17). The real estate is offered for sale by parcels at public bidding for the amount of all taxes and interest thereon and is awarded to the bidder bidding the least amount of penalty which he will accept upon redemption (not to exceed 12% for each six months or fraction thereof during the two year redemption period), and a certificate of purchase issues to the successful bidder (§§246, 247 and 248 of the Revenue Act; Ill. Rev. Stat., 1967, Chap. 120, §726, 728 and 729, App. A, pp. 22, 23, 24).

The period of redemption of the tax sale is two years from the date of the sale, but the tax purchaser may extend the period of redemption by not more than one year (§263 and 266 of the Revenue Act; Ill. Rev. Stat., 1967, Chap. 120, §734 and 737, App. A, pp. 25, 30, Article IX, Section 3 of Illinois Constitution, App. B, p. 38).

In order to obtain a tax deed, if no redemption has been made within not more than five nor less than three months prior to the expiration of the period of redemption, the tax purchaser must file a petition in the circuit court of the county involved, stating on what date he will unless redemption is made, appear, and make application for an order directing a tax deed be issued (§268 of the Revenue Act; Ill. Rev. Stat., 1967, Chap. 120, §747, App. A, p. 30). Thereafter, not more than five nor less than three months prior to the expiration of the period of redemption, notice must be *personally* served on the owner and parties interested if they can with due diligence be found within the county. Only

if such owner cannot be found within the county is substituted service permitted (§263 and 266 of the Revenue Act; Ill. Rev. Stat., 1967, Chap. 120, 744 and 747, App. A, pp. 28, 30). Such notice must inform the recipient that the real estate was sold, in whose name it was last assessed, the description, what taxes were included, when the period of redemption will expire, the fact of the filing of the petition in the circuit court, and the date the matter is set to be heard in court (§263 and 266 of the Revenue Act; Ill. Rev. Stat., 1967, Chap. 120, 744 and 747, App. A, pp. 28, 30).

In addition, pursuant to Circuit Court of Cook County Rule 12.5, a similar but simplified notice is independently mailed by certified mail to the owners and interested parties by the circuit court clerk.

If redemption is still not made within the permitted time, then the tax purchaser may appear in the circuit court of the county at the time designated in the notice and make proof of compliance with the law. If the court is satisfied that the tax purchaser has complied with all statutory prerequisites, the tax purchaser presents the court with a transcript of all of his proof, and secures the entry of an order directing the issuance of a tax deed which is issued by the county clerk (§266 and 268 of the Revenue Act; Ill. Rev. Stat., 1967, Chap. 120, 747 and 749, App. A, pp. 30, 32).

Although the laws prohibiting the annual sale of real estate for nonpayment of taxes have been amended from time to time, the present system of publication of the delinquent list and application for a judgment and order of sale was first enacted in 1839 and has been part of the laws affecting ownership of Illinois real estate since that date for a period of over 130 years. Indeed, this system is even

embodied in the Illinois Constitution (Illinois Constitution of 1870, Article IX, Sections 1 and 3, Appendix B, p. 381).

Appellants do not contend that there was a failure to follow any of the statutory provisions above described, including service of the various notices required by law. In fact, appellants have admitted that they not only received and read the notices, but appellant Louis Balthazar, a self-employed barber, stated in his deposition that he did not intend to pay the taxes until he was forced to do so.

The District Court, based on the precedents set by this Court, found the statutes involved to be constitutional and dismissed the complaint for failure to state a cause of action.

ARGUMENT

THE DECISION OF THE DISTRICT COURT WAS CORRECTLY BASED ON PRECEDENTS SET BY DECISIONS OF THIS COURT

In *Nelson v. New York*, *ante*, p. 108, this Court again recently reiterated and upheld the principle that States only need to give property owners adequate notice of their tax delinquency and an opportunity to be heard in order to comply with due process. The District Court relied and relied upon the decision in this case in entering its decree dismissing the complaint herein.

In order to offset this clear and determinative precedent, in their Jurisdictional Statement, Appellants have contended that the District Court misapprehended the *Nelson* case. They achieve this result by lifting from context certain language of the *Nelson* case at page 110 wherein this Court in part stated: "But we do not have here a statute which absolutely precludes an owner from obtaining surplus and equity." Appellants state this language would cause this Court to reach a result different from the result reached in *Nelson*. Appellants' contention is not well founded.

It is obvious that this language was placed in the *Nelson* decision for the sole purpose of showing that the decision was consistent with prior New York state court decisions which interpreted their statutes to give the owner of the property the right to avail himself of surplus value. It was not intended to mean that the failure to provide for surplus value rendered the statute unconstitutional.

This fact becomes even more obvious when the balance of the opinion is examined. In fact, in the above-quoted which appellants have taken out of context, in *Nelson* this Court found it necessary to differentiate the case of *United States v. Taylor*, 104 U.S. 216.

In distinguishing *Taylor*, this Court observed the statute there involved had never been construed in the case of *United States v. Taylor*, *supra*, to require payment

of surplus value to the owner. Thus, the Court held the problem was to be treated as "purely one of statutory construction without constitutional overtones."

It was only natural for this Court to comment on the possibility of the surplus value being obtained by the taxpayer in the *Nelson* case since the statutory construction in the New York courts also imposed this factor upon the particular statute involved in *Nelson*. In light of *United States v. Taylor*, the Court had to be sure that the taxpayer in *Nelson* was allowed all of his rights which in that case included the right to a surplus as interpreted by the New York courts.

However, the actual basis of the holding in *Nelson*, the gist of the constitutional overtones, was that in being at a taxpayer had a right to that he could receive surplus value; this is all that is necessary under the Constitution whether or not he availed himself of such opportunity. There is no language in the *Nelson* decision that states a taxpayer has a constitutional right to a specific taxpayer surplus value nor does this Court in any way imply that if the New York court had not construed the particular statute to allow recovery of surplus value such a denial would have been a violation of the taxpayer's constitutional rights.

Had this Court decided such an unknown, there would have been no necessity in making particular mention that *United States v. Taylor* was distinguishable due to the fact that the case involved statutory construction rather than a constitutional right.

It is therefore clear that the holding of *Nelson* is that reasonable notice must be served on the taxpayer in order to enable him to protect his rights. It says right under that statute provided for the recovery of surplus value, that

notice must be served, but there is no constitutional requirement of surplus value—only a right to be notified of what civil rights are available.

AS WAS HELD BY THE OPINION OF THE DISTRICT COURT, THE ILLINOIS STATUTORY SCHEME AFFORDS REASONABLE OPPORTUNITY FOR THE TAXPAYER TO PROTECT HIMSELF FROM FORFEITURE AND SERVES A DESIRABLE END PURPOSE OF EFFECTING THE COLLECTION OF TAXES

It is unfortunate when a person loses his property due to nonpayment of taxes, but in cases as in the instant case, where he has been afforded every opportunity to make a redemption and has *knowingly failed to do so*, the taxpayer should not be heard to complain. After all, owning property carries certain obligations and responsibilities that have been completely ignored in Appellants' argument. As Mr. Justice Walter V. Schaefer of the Illinois Supreme Court said in *Nye v. Smith*, 33 Ill. 2d 466 (1965), at page 470:

> "A property owner cannot be heard to say that he is not aware that annual taxes are recurrent charges against his property, and that his failure to meet his obligation increases the burden imposed on other taxpayers."

It is apparent that the legislature of the State of Illinois considered the various factors in arriving at a happy medium in devising the statutory scheme involved. On the one hand it protected the individual taxpayer by requiring that ample notice be given, making the redemption fee the least with the least penalty, and allowing a reasonable redemption period. On the other hand, by making delinquent taxpayers known it timely payment of the taxes is not made they may lose their property, it protected both the interest of the State in effecting collections of revenue and also the interest of those people who promptly pay their taxes.

Appellant suggests several alternative schemes which they would deem more equitable. Appellant apparently desires this Court to rewrite the Illinois statutory scheme in order to eliminate any potential profit for a tax purchaser. As the District Court correctly held, these remedies should be left to the State legislature and not the Courts.

CONCLUSION.

Wherefore, it is respectfully prayed that this Court affirm the judgment and decree of the District Court in dismissing the complaint herein.

Respectfully submitted,

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APPENDIX "A".

STATUTES INVOLVED.

706. Advertisement and application for judgment.] § 225. At any time after the first day of September next after all of such delinquent taxes on lands and lots shall become due in any year, or next after any taxes are paid under protest in any year, the Collector shall publish an advertisement, giving notice of the intended application for judgment for sale of such delinquent lands and lots, and for judgment fixing the correct amount of any tax paid under protest, in a newspaper published in the township or road district, as the case may be in which the real estate on which the delinquent taxes are due, is located and if there is no such newspaper published in the township or road district, then in some newspaper in the same county as the township or road district, to be selected by the county Treasurer: Provided, however, where the real estate is situated in a city the population of which exceeds 500,000 inhabitants such advertisement may be in any newspaper published in the same county, and where the lands or lots are situated in an incorporated town which has superseded a civil township then such advertisement shall be in a newspaper published in such incorporated town or if there is no such newspaper published in such incorporated town, then in a newspaper published in the county in which such lands or lots are located: Provided, further, that in the 10 years next following the completion of a general reassessment of real property in any county containing 500,000 or more inhabitants, made pursuant to an order of the Department, such publication shall be made not sooner than 10 days nor more than 90 days after the date when all unpaid taxes on lands and lots shall become delinquent and shall begin to bear interest. Said advertisement shall be

once published at least 10 days previous to the day on which judgment is to be prayed, and shall contain a list of the delinquent lands and lots upon which the taxes or any part thereof remain due and unpaid, other than those upon which the persons liable for the taxes thereon have in writing waived such advertisement, the names of owners, if known, the total amount due thereon, and the year or years for which the same are due. No list of the lands and lots upon which taxes shall have been paid in full under protest, the amounts so paid on, nor the names of the persons paying the same, shall be included in the list. Such collector shall give notice that he will apply to the circuit court on a specified day for judgment against the lands or lots for the taxes, and costs, and for an order to sell the lands and lots for the satisfaction thereof, and for a judgment fixing the correct amount of any tax paid under protest; and shall also give notice that on the . . . Monday next succeeding the date of application all the lands and lots for the sale of which an order shall be made, will be exposed to public sale at the building where the seat of county government is located, for the amount of taxes, and cost due thereon; and the advertisement published according to the provisions of this section shall be deemed to be sufficient notice of the intended application for judgment and of the sale of lands and lots under the order of the court, or for judgment fixing the correct amount of any tax paid under protest. Where the publisher of any paper that may have been selected by the collector shall be unable or unwilling to publish such advertisement, the collector shall select some other newspaper, having due regard to the circulation of such paper.

Provided, that in all cities, villages and incorporated towns in counties containing a population exceeding 500,000 inhabitants by the last preceding census of the United States or of this State, separate advertisements may

be made giving notice of an intended application for judgment and for an order of sale on account of delinquent special assessments at any time after the first day of August, after such special assessments shall have become delinquent, the procedure in such case to be in all other respects, except as to the time of making advertisement and application for judgment and sale, the same as in the case of delinquent general taxes. There shall not be included in the advertisement and application for judgment for sale provided by this section any lands or lots which are included in the advertisement and application for judgment for sale provided by section 235a of this Act. As amended by act approved May 19, 1965. L. 1965, p. 631.

* * * * *

711. Notice to owner before tax sale.] § 230. In all cases except where lands or lots have been forfeited to the State for non-payment of taxes or in counties having a population of 500,000 or more inhabitants for non-payment of taxes or special assessments two or more years in succession next preceding the application for judgment and order of sale, the county collector shall at least five days before the date of sale of delinquent lands or lots upon which the taxes or in counties having a population of 500,000 or more inhabitants upon which the taxes or special assessments remain due and unpaid, send a notice by mail to the owner, if known, or if not known, to the person shown by the collector's book to have paid the taxes or in counties having a population of 500,000 or more inhabitants, the taxes or special assessments on such lands or lots for the previous year, giving notice of application for judgment and sale of such lands or lots, and date of sale, describing the lands or lots, and the amount of taxes or in counties having a population of 500,000 or more inhabitants the amount of taxes or special assessments, together with interest and costs, due thereon.

(Appendix "A")

* * * * *

716. Proceedings by court—Form of order—Cure of error or informality.] § 235. The court shall examine said list, and if defense (specifying, in writing, the particular cause of objection) be offered by any person interested in any of said lands or lots, to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be: Provided, that no person shall be permitted to offer any such defense unless such writing specifying the particular cause of objection shall be accompanied by an official original or duplicate tax collector's receipt, showing that all taxes to which objection is made shall have been paid under protest pursuant to the provisions of section 194 of this Act; and it shall be the duty of all tax collectors to furnish such duplicate receipt without charge.

If any party objecting to any tax paid under protest is entitled to a refund of the amount, or any part thereof, so paid under protest, the court shall enter judgment accordingly. The court shall give judgment for such taxes and special assessments and penalties as shall appear to be due, and such judgment shall be considered as a several judgment against each tract or lot or part of a tract or lot, for each kind of tax or special assessment included therein; and the court shall direct the clerk to make out and enter an order for the sale of such real property against which judgment is given, which shall be substantially in the following form:

Whereas, due notice has been given of the intended application for a judgment against said lands and lots, and no sufficient defense having been made, or cause shown why judgment should not be entered against said lands and lots, for taxes (special assessments, if any), interest, penalties and costs due and unpaid thereon for

the year or years herein set forth, therefore it is considered by the court that judgment be and is hereby entered against the aforesaid tract, or tracts, or lots of land, or parts of tracts or lots (as the case may be), in favor of the People of the State of Illinois, for the sum annexed to each, being the amount of taxes (and special assessments, if any), interest, penalties and costs due severally thereon; and it is ordered by the court that the said several tracts or lots of land, or so much of each of them as shall be sufficient to satisfy the amount of taxes (and special assessments, if any), interest, penalties and costs annexed to them severally, be sold as the law directs.

Said order shall be signed by the judge. In all judicial proceedings of any kind, for the collection of taxes and special assessments, all amendments may be made which, by law, could be made in any personal action pending in such court, and no assessment of property or charge for any of said taxes shall be considered illegal on account of any irregularity in the tax lists or assessment rolls, or on account of the assessment rolls or tax lists not having been made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax list without name, or in any other name than that of the rightful owner; and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collection of the taxes, not affecting the substantial justice of the tax itself, shall vitiate or in any manner affect the tax or the assessment thereof; and any irregularity or informality in the assessment rolls or tax lists, or in any of the proceedings connected with the assessment or levy of such taxes, or any omission or defective act of any other officer or officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected,

supplied and made to conform to law by the court, or by the person (in the presence of the court) for whose neglect or default the same was occasioned. Provided, that where separate advertisement and application for judgment and order of sale is made on account of delinquent, special taxes or special assessments in all cities, villages and incorporated towns in counties containing a population exceeding 500,000 inhabitants by the last preceding census of the United States or of this State, and in cities, villages and incorporated towns in other counties in which the county board by resolution has extended the time in which the return, required in section 209, may be made, the procedure shall in all respects be the same as in this section prescribed, except that there shall be two separate judgments and orders for sale, one on account of delinquent special taxes and special assessments and the other on account of delinquent general taxes. As amended by act approved May 23, 1957. L. 1957, p. 249.

* * * * *

718. Appeal from tax judgment.] § 237. Appeals from the judgment of the court may be taken to the Supreme Court as in other civil cases by the party appealing filing a notice of appeal within thirty days from the rendition of such judgment. But no appeal from any judgment for the sale of lands or lots for taxes shall operate as a supersedeas unless the party filing notice of appeal shall, at the time of filing the notice of appeal, deposit with the county collector an amount of money equal to the amount of the judgment and costs. If in case of an appeal, the judgment shall be affirmed in whole or in part, the Supreme Court shall enter judgment for the amount of the taxes with damages, not to exceed ten per cent, and order that the amount deposited with the collector, as aforesaid, or paid under protest or so much thereof as may be necessary, shall be credited upon the judgment so rendered, and execution shall issue for

the balance of said judgment, damages and costs. The Clerk of the Supreme Court shall transmit to said county collector, a certified copy of the order of affirmance, and it shall be the duty of the collector, upon receiving the same, to apply so much of the amount deposited with him, as aforesaid, or paid under protest as shall be necessary to satisfy the amount of the judgment of the Supreme Court, and to account for the same as collected taxes. If the judgment of the circuit court shall be reversed and the cause remanded for a rehearing, and if upon the rehearing, judgment shall be rendered for the sale of the lands or lots for taxes, or any part thereof, or fixing the correct amount of any tax paid under protest, and such judgment be not appealed from, the clerk of the circuit court shall certify to the county collector the amount of such judgment, and thereupon it shall be the duty of the county collector to certify to the county clerk the amount deposited with him, as aforesaid, or paid under protest, and the county clerk shall credit the said judgment with amount of such deposit, or payment under protest, or so much thereof as will satisfy the judgment, and the county collector shall be chargeable with, and accountable for, the amount so credited, as collected taxes. Nothing herein contained shall be construed as requiring an additional deposit in case of more than one appeal being prosecuted in said proceedings. If upon a final hearing, judgment shall be refused for the sale of lands or lots for the taxes, or any part thereof, or judgment fixing the correct amount of any tax shall be rendered for less than the amount thereof paid under protest, the collector shall pay over to the party who shall have made such deposit or payment, or his legally authorized agent or representatives, the amount of the deposit or payment, or so much thereof as shall remain after the satisfaction of the judgment against the premises in respect of which such deposit or payment shall

have been made. As amended by act approved May 19, 1965. L. 1965, p. 631.

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724. Manner of conducting sale.] § 243. The collector, in person or by deputy, shall attend at the court house in his county, on the day specified in the notice for the sale of real estate for taxes, and then and there, between the hours of nine o'clock in the forenoon and four o'clock in the afternoon, proceed to offer for sale, separately and in consecutive order, each tract of land or town or city lot in the said list on which the taxes, special assessments, interest or costs have not been paid. Provided, however, that in any county containing 500,000 or more inhabitants such offer for sale shall be made between the hours of eight o'clock in the forenoon and eight o'clock in the evening: and the collector's office shall be kept open during all hours in which such sale shall be in progress. The sale shall be continued from day to day, until all the tracts or lots in the delinquent list shall be sold or offered for sale: Provided, however, that any city, village or town interested in the collection of any tax or special assessment, may, in default of bidders for same, withdraw frrom collection any such special assessment levied against any such tract of land or lot by the corporate authorities of such city, village or town, and in case of such withdrawal there shall be no sale of such tract of land or lot on account of the delinquent special assessment thereon.

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726. What bid accepted.] § 245. The person at such sale offering to pay the amount due on each tract or lot for the least percentage thereon as penalty, shall be the purchaser of such tract or lot: Provided, that no bid shall be accepted for a penalty exceeding twelve per cent (12%) of the amount of such tax or special assessment.

(Appendix "A")

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728. Payment by purchaser—Failure to complete purchase.] § 247. The person purchasing any tract or lot, or any part thereof, shall forthwith pay to the collector the amount charged on such tract or lot, and on failure so to do, the tract or lot shall be again offered for sale in the same manner as if no such sale had been made; and in no case shall the sale be closed until payment is made, or the tract or lot again offered for sale. Provided, in counties having a population of 500,000 or more, as shown by the last United States census, only the taxes, special assessments, interest and costs as advertised in the sale shall be required to be paid forthwith in cash. The general taxes charged on the land remaining due and unpaid, not included in the advertisement, shall be paid by the purchaser within 10 days after the sale, provided that upon payment of the fee provided by law to the County Clerk (which fee shall be deemed part of the costs of sale) the purchaser may make written application within such period of 10 days to the county clerk for a statement of all such taxes, interest and costs and an estimate of the cost of redemption of all forfeited general taxes, as are not included in the advertisement and after obtaining such statement and estimate and an order on the county collector to receive the amount of forfeited general taxes, if any, the purchaser shall pay to the county collector all such remaining taxes, interest and costs, and the amount necessary to redeem the forfeited general taxes, who shall issue the purchaser a receipt therefor. Any delay in providing the statement or in accepting payment, and delivering receipt therefor, shall not be counted as a part of the 10 days. When the receipt of the collector is issued a copy shall be filed with the county clerk and the county clerk shall include the amount shown in such receipt in the amount of the purchase price of such land in the certificate of purchase.

and thereupon the purchaser shall be entitled to a certificate of purchase. If a purchaser fails to complete his purchase as herein provided, the purchase shall become void, and be of no effect, but the collector shall not refund the amount paid in cash at the time of the sale, except in cases of sale in error. Such amount shall be treated as a payment and distributed to the taxing bodies as other collections are distributed. The lien for taxes for such amount, however, shall remain on the land, in favor of the purchaser, his heirs or assigns, until paid with 5% interest on such amount from the date the purchaser paid the same, and the amount and fact of such ineffective purchase shall be entered in the tax judgment, sale, redemption and forfeiture record opposite the land upon which the lien remains. No redemption shall be made without payment of this amount for the benefit of the purchaser, and no future sale of the land shall be made except subject to the lien of such purchaser. This section shall not apply to any purchase by any city, village or town in default of other bidders at any sale for delinquent special assessments. As amended by act approved Aug. 21, 1961. L. 1961, p. 3755.

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729. Certificate of purchase—Withdrawal or forfeiture of special assessments in counties of 500,000 or more.] § 248. The county clerk shall make out and deliver to the purchaser of any lands or lots sold as aforesaid a certificate of purchase, to be countersigned by the collector, describing the land or lots sold as the same was described in the delinquent list, date of such sale, the amount of taxes, special assessments, interest and cost for which the same was sold and that payment has been made therefor. If any person shall become the purchaser of more than one tract, block, lot or piece of real estate owned by one party or person, such purchaser may have the whole or one or more of them included in one certificate, but separate certificates shall

be issued in all other cases. Such certificate of purchase shall be assignable by endorsement, and an assignment thereof shall vest in the assignee or his legal representatives, all the right and title of the original purchaser.

In counties having a population of 500,000 or more inhabitants, the county clerk, upon request of the city comptroller or other municipal officer authorized by the city council or board of trustees of any city, village or town to make such request shall issue to such city, village or town, a certificate of withdrawal or forfeiture countersigned by the county collector for each lot, tract or parcel of land withdrawn from collection or forfeited for nonpayment of any special assessment. Such certificate of withdrawal or forfeiture shall describe the land or lots withdrawn or forfeited as the same was described in the delinquent list, the date of such withdrawal or forfeiture, and the amount of the special assessment, interest and costs.

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734. Time and conditions of redemption.] § 253. Real property sold under the provisions of this Act may be redeemed at any time before the expiration of 2 years from the date of sale, by payment in legal money of the United States to the county clerk of the proper county, the amount for which the same was sold, together with the amount of the penalty bid at such sale, unless the property has been purchased pursuant to Section 272 of this Act, in which event the penalty bid shall be 12%, if redeemed at any time before the expiration of 6 months from the day of sale; if between 6 and 12 months, the amount for which the same was sold, together with twice the amount of the penalty bid; if between 12 and 18 months, the amount for which the same was sold, together with 3 times the amount of the penalty bid; if between 18 months and 2 years, the amount for which the same was sold, together with 4 times the amount of

the penalty bid at said sale. The person redeeming shall also pay the amount of all taxes and special assessments accruing after such sale with 7% penalty thereon, for each year or portion thereof intervening between the time of the payment of the subsequent tax or special assessment and the time of redemption, in all cases where the purchaser at the tax sale, or his assignee, pays such subsequent tax or special assessment after it has become delinquent or, after the holder of the certificate of purchase has filed a petition for a tax deed pursuant to Section 266 of this Act; also, all fees paid to the registrar of titles of the proper county incident to registering tax certificates in compliance with "An Act concerning land titles," approved May 1, 1897, as heretofore and hereafter amended, and it is the duty of the county clerk to include in the certificate of redemption the amount of the subsequent taxes, special assessments and fees of the registrar of titles paid by the purchaser or holder of the tax certificate: Provided, however, that the county clerk shall not be required to include any subsequent taxes, special assessments or fees of the registrar of titles in his certificate of redemption, nor shall the payment thereof be a charge upon the land sold for taxes, unless the purchaser, assignee, or holder of the tax certificate of sale shall have filed and have posted by the county clerk on the tax judgment, sale, redemption and forfeiture record, before redemption, an official, original or duplicate receipt for the payment of such subsequent taxes, special assessments or fees of the registrar of titles, and it shall be the duty of the tax collector and registrar of titles to furnish such duplicate receipts. The person redeeming shall also pay all costs and expenses of receivership pursuant to Section 253a of this Act to the extent that such costs and expenses exceed any income from the property in question, provided such costs and expenditures have been approved by the court appointing such

receiver and provided that a certified copy of such order of approval is filed and posted by the county clerk on the tax judgment, sale, redemption and forfeiture record before redemption. In the event that income should exceed expenditures, such net income is to be deposited with the clerk of the court ordering the tax sale and shall be distributed upon court order to the owner or owners of the property in question in the proportions as determined by said court.

In the event that the property in question shall not be redeemed, no deficiency judgment shall be taken on account of said receivership proceedings, against the owner or owners of the property.

Such real property may also be redeemed after the expiration of 2 years from the date of sale, until expiration of the extended period of redemption, by payment in legal money of the United States to the county clerk, of the amount for which the said property was sold, the penalties provided herein for the 2 years after sale together with interest thereafter at 6% per annum on the face amount of such tax sales, and subsequent taxes, special assessments, fees of the registrar of titles and costs and expenses of receivership paid by the purchaser as herein provided, and advertising fees and $5 costs. Tenants in common or joint tenants shall be allowed to redeem their individual interests in real property sold under the provisions of this Act in the same manner and under the terms specified in this Section for the redemption of other real property; any redemeption made shall inure to the benefit of the person having the legal or equitable title to the property redeemed, subject to the right of the person making the same to be reimbursed by the person benefited. As amended by act approved July 26, 1967. L. 1967, p. ....., S.B. No. 472.

(Appendix "A")

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744. Notice to owner, persons in possession and others —Extension of time for redemption.] § 263. No purchaser or assignee of such purchaser of real estate sold for nonpayment of general taxes or special assessments, shall be entitled to a deed until the following conditions have been complied with, to-wit: Such purchaser or assignee shall serve, or cause to be served, notice of such purchase, not less than 3 months prior to the date when the time of redemption, or extended time of redemption as hereinafter provided shall expire, upon the following persons: upon occupants or persons in actual possession of such real estate; upon the person in whose name the real estate was last assessed for general taxes, if, upon diligent inquiry, he or she can be found in the county: and upon the owners of or parties interested in such real estate, including trustees and mortgagees of record, if they can upon diligent inquiry be found in the county. If the person in whose name the real estate was last assessed for general taxes cannot upon diligent inquiry be found in the county, notice shall be sent by registered mail or certified mail, return receipt requested, to the address shown for such persons on the assessor's books. Such notice by registered or certified mail, return receipt requested, shall also be sent to the owners of or parties interested in such real estate, including trustees and mortgagees of record, provided such persons cannot upon diligent inquiry be found in the county. In such notices the purchaser, or his assignee, shall state when he purchased the real estate, in whose name last taxed, the description of the real estate he has purchased, what taxes or special assessments were included in the judgment or decree for which the real estate was sold, and when the time of redemption will expire.

If such owners of such real estate or the parties interested therein cannot be found in the county and the person in actual occupancy or possession is tenant to, or

in possession under the owners or the parties interested therein, then service of such notice upon the tenant or occupant or person in possession shall be deemed service upon such owners or parties interested. If no person is in possession or occupancy of such real estate, or if the person in whose name the same was last assessed for general taxes, upon diligent inquiry, cannot be found in the county, or if such owners of or parties interested in such real estate, including trustees and mortgagees of record, upon diligent inquiry, cannot be found in the county, then such purchaser or his assignee shall publish such notice, as to them, in some newspaper published in such county. If no newspaper is published in such county, then such notice shall be published in the newspaper that is published in this State nearest the county seat of the county in which such real estate is located. If such owners or parties interested are unknown to such purchaser or his assignee, then such publication, as to them, may be made to the unknown owner or parties interested as aforesaid. Such notice by publication shall be given 3 times, the first publication not more than 5 months, and the last publication not less than 3 months before the time of redemption expires. Such notice of publication shall include not to exceed one lot, block, tract or piece of land as listed, assessed and sold in one description, except in cases where more than one lot, block, tract or piece of land is owned by one party or person, in which case all the lots, blocks, or tracts owned by such person may be included in one notice. The purchaser or assignee may extend the time of redemption for such real estate either before or after the expiration of 2 years from the date of sale for a period which will expire not later than 3 years from the date of the sale by filing with the county clerk of the county in which the real estate is located a written notice to that effect describing the real estate, stating the date of the sale and specify-

ing the extended time of redemption. If the time of redemption is extended, the purchaser or assignee must give the notices herein provided at the specified times prior to the expiration of the extended period of redemption. As amended by act approved July 22, 1965. L. 1965, p. 1982.

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747. Petition for issuance of tax deed—Filing fee—Notice—Order—Writ of assistance—Appeal—Liberal construction.] § 266. At any time within 5 months prior to the expiration of the time of redemption from the sale of any real estate for non-payment of taxes or special assessments, pursuant to judgment and order of sale on the County Collector's application for judgment and order of sale under the provisions of Section 225 of this Act, as amended, the purchaser or his assignee may file a petition in the circuit court in the same proceeding wherein the judgment of sale was entered upon which the sale was had, praying that the court direct the county clerk to issue a tax deed if the real estate is not redeemed from the sale. Such petition shall be accompanied by a filing fee of $15.00. Notice of the fact of filing the petition and the date on which the petitioner intends to make application for an order on the petition that a deed issue if the real estate is not redeemed from the sale shall be given to occupants, owners and persons interested in the real estate in the same manner as provided in Section 263, except that only one publication shall be required. The notice to occupants and the notice by publication shall be given not less than 3 months prior to the date fixed for making application that a deed issue. The purchaser or his assignee may, if he desires, insert in the notice or notices required by Section 263 the fact of filing the petition for a tax deed and the date on which he intends to apply in the circuit court for an order for a deed if the real estate is not redeemed from the sale, in which case the notice provided by this sec-

tion shall not be required. The county clerk shall be notified of the filing of the petition and any person owning or interested in the real estate may if he desires, appear in the proceeding. If the time of redemption expires and the real estate has not been redeemed from the sale and all taxes and special assessments which became due and payable subsequent to the sale have been paid and all forfeitures and sales which occur subsequent to the sale have been redeemed and the notices required by law have been given and the petitioner has complied with all the provisions of law entitling him to a deed, the court shall so find and shall enter an order directing the county clerk on the production of the certificate of purchase and a certified copy of said order, to issue to the purchaser or his assignee a tax deed. However, the court shall insist on strict proof of notice and, in the event due diligence is claimed, shall inquire into the facts of diligence, and shall require further that the evidence relative thereto be transcribed in all cases including default matters, and such transcript shall be made a part of the court order. If the court refuses to enter an order directing the county clerk to execute and deliver the tax deed, because of the failure of the purchaser to fulfill any of the above provisions, it shall order the return of the purchase price forthwith as in case of sales in error in all cases where the purchaser or his assignee has made a bona fide attempt to comply with the statutory requirements for the issuance of the tax deed. The court may, and upon application therefor shall, issue a writ of assistance to put the grantee in possession of the real estate and may enter such orders and issue such writs as may be necessary or desirable to maintain the grantee in possession of the real estate. Tax deeds issued pursuant to this Section are incontestable except by appeal from the order of the court directing the county clerk to issue the tax deed. However, relief from such

order may be had under Section 72 of the "Civil Practice Act", approved June 23, 1933, as heretofore or hereafter amended, in the same manner, upon the same grounds and to the same extent as may be had under that Section with respect to final orders, judgments and decrees in other proceedings and the court shall consider defenses relating to questions of the notices required by Section 263 and the proof presented in the hearing required by this Section. This Section shall be liberally construed so that tax deeds herein provided for shall convey merchantable title. Tax deeds issued pursuant to this Section are subject to Section 266b of this Act. As amended by act approved July 26, 1967. L. 1967, p. ....., S.B. No. 472.

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749. Form of deed.] § 268. The deed so made by the county clerk under the official seal of the county shall be recorded in the same manner as other conveyances of real estate, and shall vest in the grantee, his heirs and assigns, the title of the property therein described without further acknowledgment or evidence of such conveyance, and said conveyance shall be substantially in the following form:

State of Illinois
County of .....—ss.

Whereas at a public sale of real estate for the nonpayment of taxes, made in the county aforesaid, on the ..... day of ..... A. D. 19....., the following described real estate was sold, to wit: (here place description of real estate conveyed); and whereas, the same not having been redeemed from said sale, and it appearing that the holder of the certificate of purchase of said real estate has complied with the laws of the State of Illinois necessary to entitle (insert him, her or them) to a deed of said real estate: Now, therefore, know ye, that I ....., county clerk of said county of

(Appendix "A")

..... in consideration of the premises and by virtue of the statutes of the State of Illinois in such cases provided, do hereby grant and convey unto ...., his heirs and assigns forever, the said real estate hereinbefore described.

Given under my hand and the seal of the County of ..... this ..... day of ....., A.D. 19.....

* * * * *

751. Deed as evidence—Payments on restoration of title.] § 270. Deeds executed by the county clerk as aforesaid are prima facie evidence in all controversies and suits in relation to the right of the purchaser, his heirs or assigns, to the real estate thereby conveyed of the following facts: First—That the real estate conveyed was subject to taxation at the time the same was assessed, and had been listed and assessed in the time and manner required by law. Second—That the taxes or special assessments were not paid at any time before the sale. Third—That the real estate conveyed had not been redeemed from the sale at the date of the deed. Fourth—That the real estate was advertised for sale in the manner and for the length of time required by law. Fifth—That the real estate was sold for taxes or special assessments as stated in the deed. Sixth—That the grantee in the deed was the purchaser or assignee of the purchaser. Seventh—That the sale was conducted in the manner required by law. And any judgment for the sale of real estate for delinquent taxes, except as otherwise provided in this Section, shall estop all parties from raising any objections thereto, or to a tax title based thereon, which existed at or before the rendition of such judgment or decree, and could have been presented as a defense to the application for such judgment in the court wherein the same was rendered, and as to all such questions, the judgment itself is conclusive evidence of its regularity and validity in all collateral proceedings, except in cases where the tax or special assessments have been paid or

the real estate was exempt from general taxes under this Act or was not subject to special assessments: Provided, that any judgment or decree of court, in law or equity setting aside any tax deed procured under this Act, or restoring the owner of same to possession, shall provide that the claimant shall pay to the party holding such tax deed the following, to be estimated by the county clerk: All taxes and legal costs, as provided by law, with interest at 5% per annum, together with subsequent taxes and special assessments paid and the statutory fees and costs incurred: for the service of the notices provided by law which must be served by holders of certificates of sale to occupants, owners or parties interested in real estate sold for taxes, the sum of $3 for each lot, block, tract or piece of land, as listed, assessed and sold in one description; the filing fee in the circuit court: the actual cost paid to the county clerk for issuing the tax deed: the actual cost of recording the tax deed; $1 for publication fees for each lot, block, tract or piece of land as listed, assessed and sold in one description. No final judgment or decree of court in any case either at law or in equity or in proceedings under the Eminent Domain Act involving the title to or interest in land in which such party holding such tax deed shall have an interest or setting aside any tax deed procured under this Act shall be entered until the claimant shall make reimbursement to the party holding such tax deed and payments as herein provided in so far as it shall appear that the holder of such deed or his assignors shall have properly paid or be entitled to in procuring such deed. The county clerk is entitled to a fee of $10 for preparing the estimate of the amount required to redeem, and such estimate of the county clerk is prima facie evidence in all courts of the amounts due the tax title holder. As amended by act approved June 19, 1967. L. 1967, p. ....., H.B. No. 552.

(Appendix "A")

* * * * *

752. When deed must be taken out—Judgment setting aside lien under certificate of sale.] § 271. Unless the holder of the certificate for real estate purchased at any tax sale under this Act takes out the deed in the time provided by law, and files the same for record within one year from and after the time for redemption expires, the certificate or deed, and the sale on which it is based, shall, from and after the expiration of such one year, be absolutely null and void with no right to reimbursement. If the holder of such certificate is prevented from obtaining such deed by injunction or order of any court, or by the refusal or inability of any court to act upon the application for a tax deed, or by the refusal of the clerk to execute the same, the time he is so prevented shall be excluded from computation of such time. Certificates of purchase and deeds executed by the clerk shall recite the qualifications required in this section.

If any city, village or town, interested in the collection of any tax or special assessment now holding or which shall acquire a certificate of sale for real estate purchased at a tax sale as herein provided, it shall not be required to take out a deed for such real estate but may preserve its lien under such certificate of sale, beyond the period of redemption herein fixed, by recording such certificate of sale or evidence thereof within 3 years from the date of such certificate in the office of the recorder of deeds of the county wherein such real estate is situated, or by presenting same for registration in the manner provided by law, to the registrar of titles in the case of land registered under "An Act concerning land titles," approved May 1, 1897, amended. The evidence of such certificate of sale for recording may be in substantially the following form:

(Appendix "A")

STATE OF ILLINOIS
COUNTY OF .....—ss

Whereas, at a public sale of real estate for the nonpayment of taxes, made in the county aforesaid, on the ..... day of ..... A.D. 19....., the following described real estate was sold to the (here place name of city, village, or town), to-wit: (here place description of real estate), for the delinquent special assessment (here place the special assessment warrant number and installment). Unless payment or settlement is made at the office of (here place proper city, village or town officer), the municipality on behalf of which the above lien or liens are created may at any time after 2 years from the date of sale, sell and assign the certificate of sale, and either the municipality or the assignee at any time after the 2 years may file a bill to foreclose or sue for the amount of such special assessment due.

Dated this ..... day of ..... A.D. 19.....

.....

(Proper Officer)

Any judgment or decree of court in law or in equity, setting aside the lien under the certificate of sale filed in accordance with this section shall provide that the claimant shall pay to the city, village or town, or its assignee holding such certificate of sale the following: The amount for which the same was sold, together with the amount of the penalty bid at the tax sale, if set aside before the expiration of 6 months from the day of sale: if between 6 and 12 months, the amount for which the same was sold together with twice the amount of the penalty bid; if between 12 and 18 months, the amount for which the same was sold together with 3 times the amount of the penalty bid; if between 18 months and 2 years, the amount for which the same was sold together with 4 times the amount of the penalty bid at the sale; and if

after 2 years, the amount for which the same was sold together with 4 times the amount of the penalty bid at the sale and interest thereafter at the rate of 5% per annum on the amount for which the same was sold, also costs of $5.

No final judgment or decree of court in any case either at law or in equity or in proceedings under the Eminent Domain Act involving the title to or interest in any land in which such city, village or town or its assignee holding such certificate of sale shall have an interest, or setting aside any lien under the certificate of sale filed under this Act shall be entered, until the claimant shall make such reimbursement to the city, village or town or its assignee holding such certificate of sale. The county clerk is entitled to a fee of $2 for preparing the estimate of the amount required to redeem, and such estimate of the county clerk is prima facie evidence in all courts of the amount due to such city, village or town or its assignee. As amended by act approved June 19, 1967. L. 1967, p. ...., H.B. No. 552.

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APPENDIX "B".

PERTINENT PORTION OF ILLINOIS CONSTITUTION.

ARTICLE IX

Revenue

* * * * *

§ 4. The general assembly shall provide, in all cases where it may be necessary to sell real estate for the non-payment of taxes or special assessments for state, county, municipal or other purposes, that a return of such unpaid taxes or assessments shall be made to some general officer of the county having authority to receive state and county taxes; and there shall be no sale of said property for any of said taxes or assessments but by said officer, upon the order or judgment of some court of record.

§ 5. The right of redemption from all sales of real estate for the non-payment of taxes or special assessments of any character whatever, shall exist in favor of owners and persons interested in such real estate, for a period of not less than two years from such sales thereof. And the general assembly shall provide by law for reasonable notice to be given to the owners or parties interested, by publication or otherwise, of the fact of the sale of the property for such taxes or assessments, and when the time of redemption shall expire: *Provided,* that occupants shall in all cases be served with personal notice before the time of redemption expires.

* * * * *

SUPREME COURT, U. S.

NOV 8 1969

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 593

LOUIS BALTHAZAR and DORETTA BALTHAZAR, his wife,

Plaintiffs-Appellants,

vs.

MARI, LTD., an Illinois corporation, and ALLAN L. BLAIR; JOHN BOYLE, Chief Judge of the Circuit Court of Cook County, Illinois, as representative of all chief judges of Circuit Courts in the State of Illinois,

Defendants-Appellees.

On Appeal from a Decision of a Three-Judge Court of the District Court of the Northern District of Illinois, Eastern Division

REPLY IN SUPPORT OF JURISDICTIONAL STATEMENT

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On Appeal from a Decision of a Three-Judge Court of the District Court of the Northern District of Illinois, Eastern Division

REPLY IN SUPPORT OF JURISDICTIONAL STATEMENT

RESPONDENT RELIES ON CASES OF THIS COURT WHICH GIVE THE DELINQUENT TAXPAYER AN OPPORTUNITY FOR A PUBLIC SALE FROM WHICH HE MAY RECEIVE THE SURPLUS VALUE. THE ILLINOIS SYSTEM, WITHOUT THIS SUBSTANTIVE RIGHT, IS UNCONSTITUTIONAL.

Respondent relies on *King* v. *Mullins*, 171 U.S. 404 (1898) (Resp. Br. p. 9). But in the *King* case this Court

upheld a West Virginia forfeiture statute which provided for a public sale with any surplus value over existing tax liability to the owner, accord *Kentucky Union* v. *Kentucky*, 219 U.S. 140 (1911) (Resp. Br. p. 9). It is the lack of this substantive element that makes the Illinois statutory scheme confiscatory and unconstitutional.

Both *Bell's Gap R. Co.* v. *Pennsylvania*, 134 U.S. 232 (1890) and *Palmer* v. *McMahon*, 133 U.S. 660 (1890) (Resp. Br. p. 9) dealt with questions of notices, hearing, or other procedural, not substantive, due process questions. Petitioner here agrees, for purpose of this petition, that he received notice.(*) But all of the notice in the world would not entitle the State of Illinois to use its confiscatory powers, and to do so for the benefit of a private person, and take the value of petitioners' property in excess of his full tax delinquency (including costs and interest), in violation of the due process clause of the Fourteenth Amendment.

(*) The notice in Illinois is directed only at giving the delinquent owner time within which he can redeem from a tax purchase. As set out in the opening brief, however, that purchase is not a public sale and there is no bidding above the amount of the tax delinquency against the value of the land. There is no auction once the redemption period is closed, as in the cases cited by respondent here, and respondent concedes that there is no possible opportunity for a delinquent taxpayer to ever receive the surplus value of his property over his tax delinquency. Thus "notice" in Illinois does not go to aid a delinquent owner if he fails to redeem a delinquency but gives what the three judge court termed a "windfall" of the surplus value under a "harsh" law to a stranger.

In the cases relied upon by respondent this Court upheld state taxing statutes that allowed for forfeiture only where there was (a) notice of and (b) the opportunity to, recover the surplus value over the delinquency.

In *Nelson* v. *New York*, 352 U.S. 103 (1956) (Resp. Br. 10-11) the state statute provided opportunity for the property owner to plead, and obtain, surplus value at a public sale. If the owner failed to plead the surplus value, it went to the state, for the public benefit, and not as in Illinois, to a private party.

The cases cited by respondent support the arguments in favor of relief prayed by petitioner (on behalf of himself and all other persons similarly situated).

Respectfully submitted,

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APPENDIX

CRITICAL ANALYSIS OF CASES CITED BY RESPONDENT

The cases of *King* v. *Mullins*, 171 U.S. 404 (1898); *Kentucky Union* v. *Kentucky*, 219 U.S. 140 (1911); *Bell's Gap Railroad* v. *Pennsylvania*, 134 U.S. 232 (1890); and *Palmer* v. *McMahon*, 133 U.S. 660 (1890) all involved questions of procedural due process. The issue before the Court in those cases was not whether the state could take certain property to satisfy taxes; the issue was whether the state followed fair procedures in taking the property such as adequate notice and an opportunity to be heard. Procedural due process is not the issue in the instant case—appellants, for purposes of this petition, acknowledge that they received adequate notice and were given an opportunity to be heard. Appellants' asserted right is substantive; even if the state had given appellants a thousand notices and a thousand hearings the state would still not be entitled to absolutely deprive appellants of the surplus value of their property. Were appellees' argument accepted the state could constitutionally sentence a man to death for stealing a loaf of bread as long as the man was given adequate procedural safeguards.

King v. *Mullins*, *supra*, is clearly not authority for the constitutionality of the taxing scheme challenged in the instant case. Quite the contrary, the implication of the *Mullins* decision is that the Illinois system is unconstitutional.

In *Mullins*, a person whose claim rested on a chain of title running from a state grant of 500,000 acres sued in ejectment to oust persons claiming title pursuant to a state taxing statute because of a confusing series of such large land grants west of the Appalachian Mountains. The State of West Virginia was unable to keep an accurate record of lands available for taxation. By the State Constitution of 1872, the state declared that all parcels in excess of 1,000 acres which had not been registered on county tax books for five successive years were forfeited to the state.

During the years plaintiff's predecessors held title to the 500,000 acre tract, it had remained unregistered for more than five years and had been sold to the defendants' predecessors in interest. Appealing from a lower court judgment for the defendants, plaintiff claimed that the state law providing for forfeiture was unconstitutional in that no opportunity for a hearing was provided. The question being raised before the court was one of procedural due process and not the substantive questions presented in the instant case.

The Supreme Court affirmed a judgment for defendants because the delinquent owner was given an opportunity after the forfeiture to redeem his property during the judicial sale. Parenthetically, the Court emphasized that even where the owner did not redeem, the owner had an opportunity to bid at the judicial sale and if some other person was a highest bidder the owner was entitled to the surplus over the existing tax liability. 171 U.S. at 425. The Court considered such a system constitutional.

It is just such a system as described in *King* v. *Mullins* that Illinois fails to provide. Unlike West Virginia, the owner cannot bid at the sale; unlike West Virginia the owner, if he fails to redeem, is deprived of the opportunity to receive the surplus value of his property. Consequently, the *Mullins* decision casts no shadow on plaintiffs' claim; indeed, the emphasis of the Court implies that the West Virginia system (the opportunity of the owner to receive surplus value) may constitute a constitutional minimum.

Similarly, *Kentucky Union* v. *Kentucky*, *supra*, impliedly rejects the constitutionality of the Illinois taxing scheme. While the *Kentucky Union* case is of significant historical interest, it clearly does not hold that the state can deny the landowner an opportunity to recover the surplus value. The states of Kentucky and Virginia had granted large land patents to land speculators in the 18th and 19th centuries. Many of these grants conflicted with one another and many grantees had failed to register their property for taxes.

Like the West Virginia statute in *King* v. *Mullins*, 171 U.S. 404 (1898) the Kentucky statute provided for forfeiture of land which had not been placed on county tax rolls. An additional aspect of the bill attempted to clear up conflicting titles between Virginia and Kentucky grantees by conveying the property to the grantee in possession. What appellees fail to note is that the Kentucky statute provided that where the landowner had been delinquent in payment of taxes and where the land was to be forfeited to the state, the land was to be sold at public sale to the highest bidder and that the surplus after taxes, penalties and costs was to be paid to the delinquent owner. (Sec. 7 of the Kentucky Act discussed

at 219 U.S. 147). Thus, Kentucky like West Virginia, in *King* v. *Mullins, supra*, required a public sale at which the delinquent owner was given an opportunity to recover the surplus value. Unlike either West Virginia or Kentucky, Illinois prohibits the owner who fails to redeem the opportunity from receiveing the surplus value of this property.

Bell's Gap R. Co. v. *Pennsylvania*, *supra* and *Palmer* v. *McMahon*, *supra* have no bearing on the issue raised here. In *Bell's Gap*, a corporation had been forced to collect taxes owed on the corporation's bonds by the owners of the bonds. The corporation argued that the bondholders had not received notice of the tax and consequently procedural due process had been denied. In rejecting this argument this Court noted that specific notice of the amount of the tax was contained in the statute and no further notice was required. Unlike the instant case, the issue in *Bell's Gap* was not what the state could take but the procedure by which it took.

In *Palmer*, the taxpayer had participated in an administrative challenge to the amount of the tax assessed against him. He received a reduced assessment and did not seek to appeal the new assessment. Upon his refusal to pay the new assessment the taxing authority brought contempt proceedings against him which resulted in his incarceration. In appealing his jailing the taxpayer argued that he had been denied due process by not being allowed to challenge the amount of the tax at the contempt hearing. The court held that the taxpayer had been given adequate opportunity for such challenge at earlier proceedings and that the requirements of procedural due process had been satisfied.

Unlike the instant case the taxpayer in *Palmer* was raising a procedural rather than a substantive issue. He was not arguing that jailing itself was unconstitutional; he simply contended that the procedure which led to the jailing was wrong. Here, appellants do not challenge the *procedure* of taking surplus value; they challenge the taking itself.

The crucial distinction between *Nelson* v. *New York*, 352 U.S. 103 (1956) and the instant case is that the taxpayer who failed to redeem within the statutory period in New York was entitled to a public sale where he could receive the surplus proceeds; Illinois automatically confiscates the surplus value for the benefit of real estate speculators.

In *Nelson*, the City had (because of unpaid water bills) foreclosed on two parcels of real estate owned by plaintiff. The state foreclosure statute allowed the City to retain the property or sell it and retain the entire proceeds. The City had sold one parcel for $7,000 where the outstanding water charge was $75 and kept the surplus. It had also retained a second parcel valued at $46,000 where the water charge was $814.60.

The plaintiff sued to recover the property arguing, inter alia, that the City's failure to pay plaintiffs the surplus over the debt was an unconstitutional taking. In answer, the Court distinguished the situation presented by the instant case where the owner who cannot redeem is absolutely barred from recovery of surplus value. The Court said, "But we do not have here a statute which absolutely precludes an owner from obtaining surplus proceeds." 352 U.S. 110. The New York appellate courts had construed the New York forfeiture statute to allow

an owner to plead that the value of the property exceeded the existing liability. Where such a pleading was made, a special sale was conducted and the owner received any surplus. 352 U.S. 110.

Thus, in *Nelson*, unlike the instant case, the delinquent owner, though unable to pay his tax liability, could potentially receive the surplus value (market value-liability). In Illinois, the statute specifically precludes the opportunity for surplus value because the amount of the bids is restricted to the tax liability plus a percentage penalty.

Nelson differs from the instant case on one other ground. In *Nelson*, though the owner didn't receive the surplus value (because he did not ask for it at the proper time), the City, a public body, not a private person, retained the benefit. To justify the deprivation of the owner, the City could possibly argue that the surplus value was used for the public weal. In Illinois, the statute, in specifically setting a bidding maximum at or near the existing tax liability, automatically transfers the surplus value to a private person without any public benefit.

SUPREME COURT OF THE UNITED STATES

October Term, 1969

BALTHAZAR ET UX. *v.* MARI LTD. ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

No. 593. Decided December 8, 1969

PER CURIAM.

The motions to affirm are granted and the judgment is affirmed.

MR. JUSTICE DOUGLAS is of the opinion that probable jurisdiction should be noted.